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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. [redacted] 143

CHARLES CHRAMEK,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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INDEX

Table of Contents

	Page
Petition for Writ of Certiorari	1
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	2
Statement	3
Reasons for granting the writ	5
Conclusion	6
Appendix A: Opinion of the Court of Appeals for the Fourth Circuit	App. 1
Appendix B: Opinion of District Court on pre-trial motions	App. 6
Appendix C: Statutes	App. 15

Table of Citations

Cases

Gebardi v. *United States*, 287 U.S. 112 (1932)	4
Ingram v. *United States*, 360 U.S. 79 S. Ct. 1314, 3 L. Ed. 2d 1503 1958	4, 5
United States v. *Calamaro*, 354 U.S. 351, 77 S. Ct. 1138, 1 L. Ed. 2d 1394 (1956)	3, 5

Statutes

18 U.S.C. § 2	2—App. 15
26 U.S.C. § 4401	App. 15
§ 4411	2—App. 16
§ 4412	2—App. 16
§ 4901	2—App. 17
§ 7203	2—App. 17

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above entitled case on April 14, 1964; Petition for Rehearing denied April 29, 1964.

OPINIONS BELOW

The Petitioner was one of four Defendants convicted by the District Court sitting without a jury on the first three counts of a four count Information which charged the

Defendants jointly with engaging in a wagering and bookmaking operation without compliance with the revenue laws relating thereto. 26 U.S.C.A. § 4411; 26 U.S.C.A. § 4901, 7203; 26 U.S.C.A. § 4412. The Court of Appeals affirmed. The Opinion is set forth in Appendix A, and the unreported Opinion of the District Court with respect to suppression of evidence and other pre-trial motions is set forth in Appendix B.

JURISDICTION

The jurisdiction of this Court to review the conviction is invoked pursuant to 28 U.S.C. § 1254.

QUESTIONS PRESENTED

Whether it is necessary for the Government to specifically prove the capacity of the accused as a person liable for the wagering occupational tax; or

Whether the rules of evidence are to be relaxed in a wagering tax case so that proof of participation in a bookmaking operation per se amounts to aiding and abetting the default with respect to occupational taxes.

STATUTES INVOLVED

This case involves conviction of the Petitioner for failure to obtain a special wagering occupational tax stamp, 26 U.S.C. § 4411; failure to pay the tax, 26 U.S.C. § 4901, 7203; and failure to register, 26 U.S.C. § 4412. At the trial, the Government relied upon the general aider and abettor provisions of 18 U.S.C. § 2 as making proof of the particular role of Petitioner in a gambling operation unnecessary. The aforementioned statutes are printed as Appendix C.

STATEMENT

Charles Chramek was apprehended during a raid by Internal Revenue agents along with one co-Defendant in an apartment in Suitland, Maryland, a suburb of Washington, D. C. He was charged jointly with that co-Defendant and two others as a person liable for the occupational tax stamp in connection with a joint wagering operation. The testimony fails to show or assign any particular business capacity to Chramek other than as messenger. The only type of work activity indicated by his statements to the agents was delivering payoffs—"hits"—at a salary of $75.00 per week. At the trial the Government made no attempt to specifically prove that he had been receiving wagers, and no evidence was offered to show that he was a proprietor or entreprenuer in alleged joint enterprise. The Court of Appeals affirmed the conviction on the basis that from the circumstances it can be inferred that he answered the telephone and was thereby receiving wagers "if not for himself then on behalf of others".

This case appears to fall within the authority of *United States v. Calamaro*, 354 U.S. 361 (1956). That case held that the "pick-up" man in a numbers lottery is not subject to the annual $50.00 special occupational tax. This Court made it clear that the tax on persons "engaged in the business of receiving wagers" applies to the functional types of "banker"—a person who accepts and is at risk on the wager—and the "writer"—a sales agent of the banker. This Court held that a pick-up man who collects the wagering slips and delivers them to the banker and who has no proprietary interest in the numbers enterprise is not subject to the tax. The pick-up man handles the wager as a messenger rather than receiving the wager as a contract on behalf of the banker.

The *Calamaro* opinion seems to recognize that under the statute certain participants in a gambling business may escape federal punishment. "The fact remains, however, that Congress did not choose to subject all employees of gambling enterprises to the tax and reporting requirements but was content to impose them on persons actually engaged in receiving wagers. Neither we nor the Commissioner may rewrite the statute simply because we may feel that the scheme it creates could be improved upon." 354 U.S. 351, 357.

In *Ingram v. United States*, 360 U.S. 672 (1958), this Court distinguishes between concealment from local law enforcement agencies and a conspiracy with a purpose illegal under federal law. The Court says that since gambling was a State offense in Georgia it is entirely possible for one to have participated in a concealed operation for the purpose of avoiding State prosecution without any intent or purpose to evade Federal taxes.

In a concurring opinion in which he was joined by Justices Douglas and Brennan, Mr. Justice Harlan observed that "In this case the Government has in effect sought to by-pass *Calamaro* by the simple expedient of indicting persons connected with a lottery operation not for the substantive offenses prescribed by the Internal Revenue Code, but instead for conspiring with those members of the lottery operation who are personally subject to the relevant excise taxes to evade payment of those taxes". 360 U.S. 672, 681. To the same effect the Mann Act case of *Gebardi v. United States*, 287 U.S. 112 (1932) held that a woman who agreed to be transported in commerce could not be a conspirator.

To aid and abet the business of receiving wagers is not

per se equivalent to aiding and abetting the non-payment of occupational taxes. If it were otherwise all employees and runners would be subject to the federal tax. Just as a conspiracy charge cannot cast taxpayer obligations on employees of the wagering enterprise, *Ingram v. United States*, 360 U.S. 672, neither should an aider and abettor allegation operate to make an entrepreneur out of someone who is not.

REASONS FOR GRANTING THE WRIT

If this case involved nothing more than sufficiency of evidence to sustain a particular finding of fact there would be little reason to call for a review by the Supreme Court. However, this case involves a matter of far-reaching importance and justly calls for the exercise of supervisory powers over the administration of criminal justice in the Fourth Circuit.

In practice and effect, the *Calamaro* and *Ingram* cases are not being followed. Without expressly saying so in the opinion, the Court of Appeals has adopted the Government's position, i.e., unrefined proof of involvement in a gambling enterprise is all that is required for conviction of a tax violation. This is the theory upon which the case was tried in the District Court.

Unless reversed, the authority of this case will permit the prosecution of every private in every wagering organization upon the basis of participation in the operation. This doctrine relieves the Government not only from pleading the capacity or function or relationship to the enterprise which gives rise to the tax liability, but also from proving these particular relationships.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 9056

United States of America,
Appellee,

versus

Charles Chramek,
Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, AT BALTIMORE.
EDWARD S. NORTHROP, DISTRICT JUDGE.

(Argued January 7, 1964. Decided April 14, 1964.)

Before SOBELOFF, Chief Judge, and BRYAN and J. SPENCER BELL, Circuit Judges.

Paul T. McHenry, Jr., (Joseph A. DePaul and Keane, DePaul & Willoner on brief) for Appellant, and Benjamin A. Civiletti, Assistant United States Attorney, (Thomas J. Kenney, United States Attorney, and J. Edward Davis, Assistant United States Attorney, on brief) for Appellee.

J. SPENCER BELL, Circuit Judge:

The appellant Chramek was one of four defendants convicted by the district court sitting without a jury on the first three counts of a four count information which charged them jointly with engaging in, and/or aiding and abetting in wagering and bookmaking without complying with the laws relating thereto.[1] On this appeal two questions are raised: the sufficiency of the evidence to support the conviction and the court's refusal of a separate trial. On both we find no error.

Surveillance of the defendants' activities began the latter part of June 1961. Agents of the Internal Revenue Service observed that three of the defendants, Waldow, Gabardini and Johnson, met regularly at a lunchroom late each morning where they distributed horse racing scratch sheets. From there, the men went to a residence located about half a mile away. On a number of occasions between June and November the agents observed Gabardini, Johnson and others entering and leaving the residence carrying the usual gambling paraphernalia; slips of paper, packages, and brown paper bags. The activity took place during the hours of the day when gambling operations normally take place. During October the same activities by Gabardini, Johnson and others were observed at the Stonegate Apartment, which was located nearby. Immediately adjoining the Stonegate was another apartment building, the Continental, where the agents also observed Waldow and Johnson together or in company with others entering and leaving. From the Hall outside the Continental Apartment the agents heard bets being taken, adding machines operating, and other indicia of wagering. The agents also observed the

[1] The four counts charged:

(1) That the defendants were liable for but failed to pay the special wagering occupational tax. 26 U.S.C.A. §4411; 18 U.S.C.A. §2.

(2) That defendants wilfully failed to pay the tax prior to engaging in business. 26 U.S.C.A. §§4901, 7203; 18 U.S.C.A. §2.

(3) That the defendants wilfully failed to pay the tax prior to engaging in business. 26 U.S.C.A. §§4901, 7203; 18 U.S.C.A. §2.

(4) That the defendants wilfully failed to supply the information required by 26 U.S.C.A. §§4412, 7203; 18 U.S.C.A. §2.

appellant Chramek enter the Continental carrying a brown canvas bag on the 25th of October 1961.

On December 1, 1961, the agents raided all three of the premises, in all of which they seized gambling paraphernalia. In the Stonegate Apartment they found Gabardini and Johnson; in the Continental, Waldow and Chramek. In order to gain entrance to the Continental Apartments the agents, armed with search warrants, kicked in the door when they received no answer. Upon entry Chramek was seen seated at one of two tables on which were spread several Armstrong racing sheets, numerous betting slips, number slips, two telephones, and an adding machine and money. Waldow was standing near the other table. On the wall behind the tables were clip boards containing betting information. In the apartment was found the brown canvas bag which Chramek had been seen with in October. Upon being questioned, Chramek stated that he had been working there in the apartment for six months. He stated that the $1,000.00 found in the brown bag was payoff money which he planned to deliver at the end of his day's work. He told the agent that the operation grossed about $400.00 per day; that he knew about the occupational wagering tax but had not paid it because to do so would have exposed him to local authorities. Other evidence at the trial clearly disclosed that Johnson was the lessee of both apartments and the landlady of the Continental testified that she had seen both Waldow and Johnson entering and leaving the apartment together on numerous occasions. Chramek claimed that he was merely a pickup man—a salaried messenger working for $75.00 a week—but refused to name his principal.

We think there was ample evidence to support the court's finding that Chramek was engaged in receiving wagers—if not for himself then on behalf of others.[2] The fact that the agents observed him sitting at a table covered with

[2] In *United States* v. *Calamaro*, 354 U.S. 351 (1957), the Court made it clear that a "writer" (an agent who accepts wagers from bettors) is subject to the special occupational tax. The fact that Chramek also may have acted as a pickup man is immaterial.

gambling paraphernalia, with telephones ringing, justified, indeed demanded, the inference that he was receiving wagers. Chramek himself told the officers that he had been working there at the apartment for six months. There were two telephones, both of which continued to ring while the raid was in progress. When the agents answered the telephones, bets were placed. It was a reasonable inference that Chramek, who was in his shirt-sleeves, was answering one of them and Waldow the other and that they were receiving wagers. Chramek's admissions to the agents showed a knowledge of the business greater than would be expected of a messenger. This evidence, together with his admission that he knew of his liability for the occupational tax and that he had not paid it for fear of exposing himself to prosecution by local officers is sufficient evidence to support his conviction. *United States* v. *Woodson*, 303 F. 2d 49 (6 Cir. 1962).

We now come to the question of whether the court should have granted a severance on the motion of Waldow and Chramek at some time during the trial. Rule 13 of the FED. R. CRIM. P. provides that defendants may be tried together if they may be joined in a single information. Rule 8 provides that they may be joined in a single information "if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses." Rule 14 provides that the court may in its discretion sever if an improper joinder is made. Preliminarily, we note that District Judge Chesnut in a pre-trial hearing covering over 300 pages carefully considered this question together with motions to suppress. He declined the motion to sever without prejudice to its being renewed during the trial. We think the trial court did not abuse its discretion in refusing to sever.

There was ample evidence to support the inference that the activities going on at all three places were part of one series of transactions. Johnson was obviously a participant throughout in all of the activity. His close relationship with

Waldow continued from the beginning. The idea, advanced by counsel, that Johnson was "friendly competition" with Waldow and/or Chramek is hardly compatible with the evidence that Johnson leased the Continental and paid for the furnishings and other expenses. It is a reasonable inference that as the business outgrew the residence and was moved to the apartment buildings, the owners did not want to draw the attention of the other tenants by having too much activity at one site and consequently leased the two apartments in adjoining buildings. Finally, the evidence disclosed, as conceded by counsel for Chramek in his brief, that the paraphernalia seized at the Continental where Chramek was found was much greater in amount than that discovered in either the other apartment or the residence. It is, therefore, a reasonable inference that here was the principal headquarters of the combined operation. Although in the absence of records which were required by the law, the Government failed to produce any evidence of an internal nature disclosing the financial connection between the operations at the three premises, we think the close and long association of the defendants and the physical proximity of all three premises justified the trial court's conclusion that the activities were all a part of one transaction or series of transactions. Thus, the joint information being clearly proper, it was incumbent on the defendant to make such a showing of prejudice as to provoke the discretionary remedy provided in Rule 14. *Gorin* v. *United States*, 313 F.2d 641 (1 Cir. 1963). No such showing was made here. There were only four defendants. It is not even suggested that the trial court could have had any difficulty in applying the independent evidence to each defendant's conduct. *United States* v. *Lev*, 22 F. R. D. 190 (S.D.N.Y. 1958). Under the circumstances of this case, no justification can be found for putting the Government to the expense and delay of separate trials.

Affirmed.

APPENDIX B

OPINION AND ORDER

Filed June 22, 1962.

CHESNUT, *District Judge*.

On February 20, 1962 the United States Attorney for the District of Maryland filed a criminal Information in this court against the four above named defendants jointly, under 26 U.S.C.A., charging in four counts the violation of several sections of the Internal Revenue Code requiring the obtaining of a $50. special occupational tax stamp for persons engaged in wagering activities, and other related sections requiring reporting such activities of receiving wagers without having paid the special occupational tax, failure to register and failure to supply required information. See 26 U.S.C.A., ss. 4401, 4412, 4411, 4901, 7203, 7262 and 7272; and aiding and abetting thereunder, 18 U.S.C.A., s. 2.

This criminal Information resulted from facts and disclosures alleged to have been found by Federal Officers in consequence of searches made of three separate properties in Prince George's County, Maryland, on or about December 1, 1961, under three separate search warrants issued by United States Commissioner Volkart on November 29, 1961, based on affidavits of three Special Agents of the Internal Revenue Service. Gabardini and Johnson were found and arrested by the officers at Apt. 1-B, Stonegate Apartments, 3942 Stonegate Drive, Suitland, Maryland; and Waldow and Chramek were found and arrested at Apt. 2, 3926 Suitland Road, Suitland, Maryland (a place within a few yards of the former named place, Stonegate Drive). One of the search warrants referred specially to a search of the premises at Stonegate Drive and another specially to the premises at Suitland Road. After his arrest at Stonegate Drive Johnson was taken by the Agents to what apparently was Johnson's residence at 4605 Porter Avenue,

Suitland, Maryland, where a third search was made pursuant to the search warrant.

All of these several defendants were represented by counsel of their own selection respectively and all of them were arraigned in this court on March 2, 1962, and each of them pleaded not guilty.

On March 14, 15 and 17, 1962, the defendants filed several motions in this court; each of the four defendants except Gabardini, has filed a motion to suppress the evidence allegedly obtained under the search warrants and Gabardini and Johnson have filed motions for severance of separate trials on their behalf; and Waldow and Chramek have filed a separate motion for severance for trial as between themselves and Gabardini and Johnson.

On April 30, and May 3, 1962, I heard evidence of numerous witnesses with respect to these motions. None of the four defendants submitted any testimony in person or by witnesses called by them except to the extent of cross-examination of numerous witnesses called by the government in opposition to the several motions.

With respect to the several motions for severance, I think it will be sufficient at this time to say that these motions respectively are *overruled without prejudice*. This was my view after hearing all the evidence submitted. I have also considered extended briefs filed by counsel in the case since then, but have not found in them any sufficient basis for changing the then expressed view as to severance, although I again repeat that the overruling of the motions is without prejudice, meaning that if later or hereafter in the progress of the whole case there develops good grounds for severance as to any two or more of the defendants from others, the matter can be re-considered.

With reference to the motions to suppress by or on behalf of all the defendants except Gabardini, and for the return of the property seized, counsel for the defendants advance numerous and different grounds of alleged irregularity, in form and in substance, with respect to the issuance,

serving, return and filing of papers relating to the proper procedure under Rule 41 of the F.R.Cr.P. For purposes of clarity, I will begin with the search warrant and the proceedings thereupon and thereafter relating specifically to the property, Apt. 1-B, 3942 Stonegate Drive. I have carefully read the affidavit for the search warrant, the return made by the officer serving the warrant on December 8, 1962 (within 10 days from its issuance), the inventory prepared by the officer and an itemized list of the articles seized; and also, of course, have carefully read the affidavits or statements of facts to the Commissioner offered to him and found by him to constitute probable cause for the search. The order for seizure was for articles described as "gambling paraphernalia", more particularly explained in the statement of facts constituting probable cause.

I find that all these papers are, in my opinion, in good and proper form and in substantial, if not absolutely perfect, compliance with the procedure required and outlined by Rule 41. One complaint made by counsel to the contrary, is that some of the related papers were not filed with the Clerk of the Court by the Commissioner until long after they were issued. While Rule 41(f) requires the Commissioner to file such papers with the Clerk, it does not specify the time. Rule 41(d) does specify that the return of the service of the search must be made within ten days, which was strictly complied with here, and I think it was reasonably prompt. In contending that some of the papers were not filed with the Clerk of the Court until long afterwards, counsel seems to be mistaken as to the fact because the Clerk informs me that all the papers referred to were received by him from the Commissioner in due course and with reasonable promptness. On particular inquiry made by me at the time from the Clerk of the Court, it appears that owing to the temporary indisposition of one of the filing clerks, the papers, although filed with the Clerk by the Commissioner, were not placed in the proper file of the particular case until attention was called thereto at the hearing.

Of course the much more substantial and very important

question is whether the contents of the affidavit of the three Special Internal Revenue Agents who signed the same, were sufficient to show probable cause, this must be determined from a careful reading of the statement of facts annexed to and made a part of the affidavit for the warrant. This is a long typewritten six pages and to understand it, it is helpful to make a preliminary general comment with regard to its substance as a whole. Shortly stated, it is this: before November 29, 1961, several Internal Revenue Agents, particularly Agents Rudolfi, Bedingfield and Bridgeman, had been informed by reliable and generally trustworthy persons, that Gabardini and Johnson were engaged in conducting a so-called "numbers" business; that is, accepting wagers on numbers derived from certain horse racing programs or race performances; that in the first place these wagers, after being severally collected from other people engaged as runners or pick-up men, and assembled in quantity, were transported by Gabardini and Johnson, one or the other or both, or by their subagents, to Johnson's house or apartment at 4605 Porter Avenue, and there dealt with by Gabardini and Johnson; that shortly thereafter from the same reliable Agents, information was received that a main assembly place for the collection and receipt of numerous individual wagers, was beginning to be used by Gabardini and Johnson at the Stonegate place and that thereafter and shortly before the several places were searched some part of the operations of Gabardini and Johnson conducted through Waldow and Chramek, were conducted at 3926 Suitland Road.

The affidavit as a whole consists really of three parts: (1) information believed to be reliable by the Agents; (2) personal observation by the Agents themselves of various days and occasions as to the conduct and activities of Gabardini and Johnson, together or separately, and the operation by them respectively of certain automobiles, the collection of parcels or papers thought to be parcels of wagers, and their relation particularly to the Stonegate place, and that no apparent activities were conducted at that place except during the hours when the wagering activities or the

assembling thereof and the compilation thereof, were ordinarily conducted during the day time; (3) and the opinion and belief of the Agents based on long and wide experience with respect to wagering activities of this kind, known generally as "bookmaking", that the defendants were in fact engaged in such wagering activities and that none of them had obtained the $50. special occupational tax stamp or registered and made returns, etc., as required by the revenue statutes for persons engaged in receiving wagers.

Commissioner Volkart found the affidavits legally sufficient to show probable cause for the issuance of the warrant to search and the seizure of the class of articles described under the term "gambling paraphernalia". He accordingly issued the search warrants. I also conclude that the affidavits do show probable cause. See the recently decided case by the Court of Appeals for the 4th Circuit, United States v. Irby, decided May 22, 1962. And see also Draper v. United States, 358 U. S. 307 (1958); Jones v. United States, 362 U. S. 257 (1960).

I turn now to a consideration of the other two search warrants in the case.

3926 Suitland Road, Apt. 2, Suitland, Maryland: Here again a careful reading of the proceedings for the issuance of a search warrant by the Commissioner, the affidavits showing probable cause, the issuance of the search warrant, and the return thereof and various other incidental proceedings were, in my opinion, in substantial and satisfactory compliance with the requirements of Rule 41, F.R.Cr.P. As a result of the search the Agents found and arrested two of the defendants, Waldow and Chramek, in possession and occupancy, and found and seized many different items of "gambling paraphernalia", the inventory of which has been properly made and receipt thereof properly given. The affidavits contained in the statement of evidence, in my opinion, show adequate and probable cause for the issuance of the search warrant by the Commissioner. The affidavits do not specifically refer by name to Chramek but in some character and content, they do show personal observations by

the Agents of Waldow on many occasions in relation to Johnson and Gabardini, and his visits from time to time to the premises on Suitland Road. It also appears that the described premises were under lease to another of the defendants, Clifton Johnson, while the telephone was in the name of Eric Johnson. By reference to the other affidavits relating to the place on Stonegate Drive and 4605 Porter Avenue, it is reasonably inferable from all that appears in the several affidavits that as the government contends, the place at Porter Avenue was first the place of gambling activities of Gabardini and Johnson and probably Waldow; that thereafter the gambling business was transferred to the location at Stonegate Drive and still later, by Gabardini and Johnson to Suitland Road. While the name of Chramek does not specifically appear in the affidavits, he was found with Waldow at 3926 Suitland Road. The search warrants of course were descriptive of a place rather than of a person to be searched. I conclude the search warrant for that place was validly issued and executed.

4605 Porter Avenue. I also find on similar careful examination that the search warrant as to the Porter Avenue location was validly issued, executed and returned in substantial compliance with Rule 41. It is unnecessary to more specifically review the affidavits because in connection with all three affidavits I find all legally sufficient.

Counsel for the defendants advanced many miscellaneous contentions as to alleged irregularities with reference to the execution, delivery, service, return, etc., of these three warrants. I find it would be unnecessarily tedious to refer in complete detail to each and all of these contentions. I have, however, carefully considered them all in the very full brief submitted by counsel, and further considered and replied to in the brief for the government. One particular point is that the description of the things to be seized as gambling paraphernalia is too general and vague; but in view of the nature of the activities set forth in the affidavits and the very nature of such activities as perhaps may be known from general hearsay knowledge, a more particular descrip-

tion of the things to be seized would be unreasonably meticulous. The inventory in connection with the service and return of the three warrants seems on its face in the description of the articles found and seized, to sufficiently apply as to at least many of the particular articles with the general term of "gambling paraphernalia" as here descriptively used. Counsel for the government cites numerous cases in support of the proposition that the term "Gambling paraphernalia" is adequately sufficient in somewhat similar cases. For illustration, as one of many, see Merritt v. United States, 249 F. 2d 19, 6th Cir., 1957.

In the affidavits it appears that as to some of the places searched and as to the place on Suitland Road, on at least one occasion prior to the service of the writ, a government Agent standing outside the doors of the apartment heard by ear the use of the telephone by the occupants and the calling out of lists of numbers familiar in character to the Agents as indicative of bookmaking activities. Counsel for the defendants argue that this evidence is not only insufficient but is in violation of the prohibition of "intercepting" telephone messages. In my opinion that contention has no merit as there was no interception by the listening Agent and no mechanical listening device was used by him or in any way affixed to the apartment walls. Cf. Silverman v. United States, 365 U. S. 505.

Return of property seized. The defendants' motions include a prayer for the return of the property seized as a result of the search. As we have seen, at least many of the articles described in the inventory might fairly be classed as some parts of "gambling paraphernalia" when properly identified as such by Agents experienced in this general line of activity. I assume also that if, as a result of the trial of the case, it can be ascertained and determined that some of the seized articles were not fairly to be included in the term "gambling paraphernalia" their release can be secured either voluntarily or in due course.

Among the things that were seized by the government Agents were five automobiles, three at least of which are

referred to and more particularly described in the affidavits for the search warrants. Apparently one of the automobiles seized was owned or customarily used by Gabardini, one by Johnson and one by Waldow. Of the two others, apparently one was the property of or used by Chramek, not of itself specifically referred to in the affidavits. The affidavits are to the effect that these three automobiles of Gabardini, Johnson and Waldow were used by them respectively in their gambling activities and the government contends that they are subject to condemnation under 26 USCA, s. 7302. There is specific procedure provided in the statutes with regard to the seizure of automobiles and other objects when used in violation of federal statutes, including taxing statutes. And the government calls attention to the fact that as to at least one of these automobiles, there is a civil case now pending in this court for the forfeiture of that automobile; and similarly with respect to certain moneys or property taken from the persons of Waldow and Chramek. There are also some statutory provisions with regard to administrative forfeiture or release of articles so seized by government Agents. I assume that those cases will be adjudicated in due course. The government also contends that even if the search warrants, or any of them, were defective, nevertheless the articles seized, if contraband, should not be returned. However I find no occasion at this time to consider that further here and now.

Counsel for the defendants also contend that the articles seized should be returned not only because the search warrants were invalid but also because there was no proper arrest of the defendants. The government's contention is that the defendants were arrested in the operation of gambling activities which constituted either a misdemeanor committed in the presence of the officers or at least, if a felony, was based on reasonable grounds or probable cause that a felony had been committed. See recent opinion of the 4th Circuit, United States v. Irby, May 22, 1962.

The defendants Waldow and Chramek have jointly filed a motion to dismiss the second, third and fourth counts of

the Information. As I understand this motion, the reason therefor seems to be that the second, third and fourth counts are either merged in the first count or merely alternative thereto, and if the latter, then the government should be required to elect which of the several counts it is pressing for prosecution.

In my opinion the reasons assigned for the motion are not sound, and the motion is hereby *overruled*. I think a careful reading of the several statutes specifically heretofore mentioned will show that each of the four counts in the Information states a separate offense. And I offer the comment that apparently counsel for the defendants failed to distinguish between the sufficiency of the Information as a pleading and the possibility of questions which may be presented on the evidence as to the several counts respectively.

After a full review of the defendants' motions for suppression of evidence, I conclude, for the reasons above stated, that each and all of these motions should be and they are hereby *overruled* this 22nd day of June 1962.

With regard to the separate motions for severance, I think enough has heretofore been said in connection with the affidavits to indicate the reasons why I have also overruled the motions for severance at this time but without prejudice as above explained.

W. Calvin Chesnut,

U. S. District Judge.

APPENDIX C

STATUTES

18 U. S. C.

§ 2. Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

26 U. S. C.

§ 4401. Imposition of tax

(a) *Wagers.*—There shall be imposed on wagers, as defined in section 4421, an excise tax equal to 10 percent of the amount thereof.

(b) *Amount of wager.*—In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary or his delegate, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(c) *Persons liable for tax.*—Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery. Any person required to register under section 4412 who receives wagers for or on behalf of another person without having registered under section 4412 the name

and place of residence of such other person shall be liable for and shall pay the tax under this subchapter on all such wagers received by him.

§ 4411. Imposition of tax

There shall be imposed a special tax of $50 per year to be paid by each person who is liable for tax under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable. Aug. 16, 1954, 9:45 a.m., E.D.T., c. 736, 68A Stat. 527.

§ 4412 Registration

(a) *Requirement.*—Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district—

(1) his name and place of residence;

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

(b) *Firm or company.*—Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

(c) *Supplemental information.*—In accordance with regulations prescribed by the Secretary, he or his delegate may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter.

§ 4901. Payment of tax

(a) *Condition precedent to carrying on certain business.*—No person shall be engaged in or carry on any trade or business subject to the tax imposed by section 4411 (wagering), 4461(2) (coin-operated gaming devices), 4721 (narcotic drugs), or 4751 (marihuana) until he has paid the special tax therefor.

(b) *Computation.*—All special taxes shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(c) *How paid.*—

(1) *Stamp.*—All special taxes imposed by law shall be paid by stamps denoting the tax.

§ 7203. Willful failure to file return, supply information, or pay tax

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.